

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

vs.

Case No. 07-CV-14085
HON. GEORGE CARAM STEEH

DAIRY FRESH FOODS, INC.,

Defendant.

_____ /

ORDER GRANTING IN PART PLAINTIFF EEOC'S MOTION
TO EXTEND DATES (#34)
AMENDED SCHEDULING ORDER, AND NOTICE OF
FEBRUARY 12, 2009, 2:30 P.M. HEARING ON DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT (#22)

Plaintiff Equal Employment Opportunity Commission (EEOC) moves to extend the dates set forth in a June 3, 2008 Stipulated Scheduling Order by 90 days, and to adjourn by 90 days a scheduled December 11, 2008 hearing on defendant Dairy Fresh Foods, Inc.'s October 15, 2008 motion for summary judgment. Under the Stipulated Scheduling Order, the Final Pretrial Order is currently due on January 20, 2009, the Final Pretrial Conference is set for January 26, 2009 at 9:00 a.m., and the Jury Trial is scheduled for February 3, 2009 at 9:00 a.m.. The motion has been fully briefed. Pursuant to E.D. Mich. Local R. 7.1(e)(2), it is ORDERED that the motion be resolved without oral argument.

A court's scheduling order may be modified for good cause shown. Fed. R. Civ. P. 16(b)(4). Whether to grant a modification of a scheduling order is in the district court's discretion. Inge v. Rock Financial Corp., 281 F.3d 613, 625 (6th Cir. 2002). "The primary

measure of Rule 16's 'good cause' standard is the moving party's diligence in attempting to meet the case management order's requirements." Id. (quoting Bradford v. DANA Corp., 249 F.3d 807, 809 (8th Cir. 2001)). "Another relevant consideration is possible prejudice to the party opposing the modification." Id. (citing Bradford, 249 F.3d at 809).

EEOC's motion is prompted by the resignation of EEOC trial counsel Trina Mengesha effective December 5, 2008. Attorney Dale Price was substituted as EEOC's counsel on November 26, 2008. Although Laurie Young, EEOC Regional Attorney, and Deborah Barno, Managing Attorney for the Detroit Field Office, are also named as EEOC Counsel, only Mengesha was directly involved in this action, conducting discovery and submitting the brief in response to Dairy Fresh's motion for summary judgment. EEOC has been diligent in responding to the motion for summary judgment and appointing Price as substitute trial counsel. It is reasonable to expect that Price will need additional time to properly prepare to litigate this matter notwithstanding the EEOC's familiarity with issues arising under Title VII race discrimination cases. Dairy Fresh concedes as much in offering to agree to an approximately 30-day extension.

Dairy Fresh's argument that an extension of dates beyond 30 days, into March 2009 through June 2009, would be prejudicial due to an annual food show event that occupies its employees, and thus potential witnesses, is not convincing. As EEOC points out, witnesses will not be required to attend the hearing on the motion for summary judgment. The parties have estimated only a 3-4 day trial. See June 3, 2008 Stipulated Scheduling Order. Dairy Fresh's general reference to potentially conflicting trial dates is also unpersuasive.

EEOC has demonstrated good cause for extending the existing hearing and

schedule dates for a reasonable period of time. The court has reviewed the summary judgment briefs and the evidence proffered in support of the parties' positions. Inge, 281 F.3d at 625. The court has also considered its own docket. The court finds that good cause exists for granting EEOC a more modest extension of approximately 60 days. Accordingly,

EEOC's motion to extend dates is hereby GRANTED, IN PART, to the extent that the December 11, 2008 hearing on **Dairy Fresh's motion for summary judgment** is hereby **ADJOURNED to THURSDAY, FEBRUARY 12, 2009, @ 2:30 P.M.**, and the June 3, 2008 Stipulated Scheduling Order is AMENDED as follows:

Final Pretrial Order due:	March 24, 2009;
Final Pretrial Conference:	March 31, 2009 at 2:00 p.m.;
Jury Trial Date (Trailing Docket):	April 7, 2009 at 9:00 a.m..

SO ORDERED.

Dated: December 3, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 3, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk